

**AGENDA**  
**FREMONT REDEVELOPMENT AGENCY REGULAR MEETING**  
**JUNE 21, 2011**  
**7:00 P.M.**

**1. CALL TO ORDER**

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the Redevelopment Agency and will be enacted by one motion and one vote. There will be no separate discussion of these items unless an Agency Member or citizen so requests, in which event the item will be removed from the Consent Calendar and considered in its normal sequence on the agenda. Additionally, other items without a "Request to Address the Redevelopment Agency Board" card in opposition may be added to the consent calendar. (In the report section of the agenda, consent items are indicated by an asterisk.)*

2.1 *Approval of Minutes - for the Special Meeting of January 17, 2011, for the Special Work Session and Joint Regular Meeting of January 18, 2011 and the Regular Meeting of January 25, 2011*

**3. PUBLIC COMMUNICATIONS**

3.1 Oral and Written Communications

**4. PUBLIC HEARINGS – None.**

**5. OTHER BUSINESS**

5.1 Report Out from Closed Session of Any Final Action

5.2 **IRVINGTON BART STATION AGREEMENT**

Authorization to Enter into a \$120 Million Agreement with BART to Design and Construct the Irvington BART Station

**RECOMMENDATION:** Staff recommends that the Redevelopment Agency Board adopt a resolution:

1. Approving actions and making required statutory findings in connection with funding by the Redevelopment Agency of the City of Fremont and execution of a funding agreement with the City of Fremont and BART for development of the Irvington BART Station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area; and
2. Authorizing the Executive Director or his designee to execute a Comprehensive

Agreement with the San Francisco Bay Area Rapid Transit District for the design and construction of the Irvington BART Station as described herein.

3. Appropriating \$120,000,000 for transfer to BART for construction of the Irvington BART Station, and amounts necessary to provide funding for costs of issuance of the Bonds.

Staff further recommends the Agency Board authorize the Executive Director or his designee to approve amendments to the Comprehensive Agreement, if required, provided the amendments do not have a negative fiscal impact upon the City.

## **6. ADJOURNMENT**





## **5.1 Report Out from Closed Session of Any Final Action**

## 5.2 IRVINGTON BART STATION AGREEMENT

### Authorization to Enter into a \$120 Million Agreement with BART to Design and Construct the Irvington BART Station

**Contact Person:**

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**Note:** A companion item appears on tonight's agenda for the City Council.

**Executive Summary:** With the adoption of the Consolidated Amended Redevelopment Plan in 2010, funding for the Irvington BART Station Project (the "Station Project") was secured. The Redevelopment Agency of the City of Fremont (the "Agency") will provide funds in an amount of up to \$120 million (the "Agency Funding" or "Agency Funds") using net proceeds of tax allocation bonds ("Bonds"). In compliance with Redevelopment Law related to the funding and development of the Station Project, this report and accompanying documents provide the evidentiary basis upon which the City Council, acting in its policy judgment, could make certain required statutory findings to ensure that the redevelopment purposes of using tax increment revenue for Agency funding of the Station Project are met.

Agency Funding will be provided to BART through a Comprehensive Agreement for the Design and Construction of the Irvington BART Station (the "Project Agreement") among the Agency, the City and BART. Using the Agency funding, BART (in cooperation with the City) will perform the necessary land acquisition, design and construction work to complete the Station Project. As the Station Project will have significant impacts on key portions of the City's infrastructure and serve as a major economic catalyst to the Irvington Area, the Project Agreement was developed to ensure continued cooperation between BART and the City and to define the respective rights and obligations of each party in connection with the Station Project.

In order to move forward with the Station Project, staff is recommending that the Redevelopment Agency Board (the "Agency Board") take the following actions:

1. Adopt a resolution approving actions and making required statutory findings in connection with funding by the Redevelopment Agency of the City of Fremont and execution of a funding agreement with the City of Fremont and BART for development of the Irvington BART Station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area.
2. Authorize the Executive Director or his designee to execute a Comprehensive Agreement with the San Francisco Bay Area Rapid Transit District (BART) for the design and construction of the Irvington BART Station as described herein; and approve future amendments to the Agreement, if required, provided the amendments do not have a negative fiscal impact upon the City.
3. Appropriate \$120,000,000 for transfer to BART for construction of the Irvington BART Station, and amounts necessary to provide funding for costs of issuance of the Bonds.

**BACKGROUND:** The extension of the BART system from its southern terminus in central Fremont to the Warm Springs area of southern Fremont has been planned for over 30 years when the original BART system was being developed. For at least the past 30 years, this 5.4 mile extension was planned to include two new BART stations, one at the end of the line in Warm Springs and the other – the Irvington Station – half-way between the existing station and Warm Springs in the Irvington Area at the intersection of Washington Boulevard and Osgood Road.

In 1992, BART certified a Final Environmental Impact Report (“EIR”) for the Warm Springs Extension project (the “WSX”) that included both the Warm Springs and Irvington Stations as part of the base project. However, due to lack of funding, the project languished until a funding plan was developed in approximately 2001. Due to funding constraints, the plan only included funding for the Warm Springs Station, with the Irvington Station becoming an “optional” station, to be constructed if funding could be secured. The City assumed responsibility for identifying the funding for the Irvington Station.

Full funding for the \$890 million WSX (without the Irvington Station) was secured in 2008 and, following design, BART began construction of the subway portion of the WSX in 2009. Construction of the subway is approximately 50% complete. The selection process for the final WSX contractor is nearing completion. This contractor will complete the design and construct the remaining elements of the project. Construction on the remaining elements of the WSX is scheduled to begin later this year. The full WSX project is anticipated to be completed and in operation in mid-2015.

Although the Irvington Station is not included in the WSX construction contracts, BART has determined that if the station development work begins this summer, construction could occur concurrently with the completion of the WSX construction. The goal is to have the Irvington Station completed and operational at the same time as the WSX. However, at a minimum, it is expected that all elements of the Irvington Station that could be impacted by operating trains on the WSX will be completed prior to train operations, thus avoiding the substantial additional cost that would be required to construct the station building with trains operating on the WSX.

With the adoption of the Consolidated Amended Redevelopment Plan in 2010, funding for the Irvington Station was secured. The Redevelopment Agency of the City of Fremont (the “Agency”) will provide funding for the Irvington Station in an amount of up to \$120 million (the “Agency Funding” or “Agency Funds”) using net proceeds of tax allocation bonds to be serviced by tax increment revenue from the Fremont Merged Redevelopment Project Area, which includes the Irvington subarea in which the Irvington Station will be located. Constructing the Irvington Station as part of the development of the Warm Springs extension will make the WSX more cost effective. Staff has determined that this plan for redeveloping the Fremont Merged Redevelopment Project Area is in accordance with the California Community Redevelopment Law (the “Redevelopment Law”).

Agency Funding will be provided through a Comprehensive Agreement for the Design and Construction of the Irvington BART Station (the “Project Agreement”) among the Agency, the City and BART. Pursuant to the Project Agreement, the Agency would provide the Agency Funds to BART, BART (in cooperation with the City) would perform the necessary land acquisition, design and construction work to complete the Station Project, and the City would provide input, review and approval of various elements of the Station Project. The Project Agreement discusses roles and responsibilities, time lines, construction standards and cost reimbursement for various elements of the work.

**DISCUSSION/ANALYSIS:** The Station Project is the key catalyst activity to advance public and private improvement activities that will promote economic development and job growth, improvement of the physical environment, provision of affordable housing, and stimulation of private sector reinvestment. Section 33445 of the California Redevelopment Law requires that before an agency is allowed to fund public improvements, the local legislative body must make three findings. These findings are outlined below, followed by the facts in support of each finding.

**The public improvements benefit the project area, in this case the Irvington Area, by helping to eliminate blight.** *The Station Project will introduce new ridership to the Irvington Area and create a convenient transit center for the residential neighborhood. As a result, the Station Project will help to revitalize the historic commercial district with new retail and restaurant facilities and will conserve and enhance the residential areas. In turn, these improved economic circumstances will stimulate currently lacking private sector investment that would help to eliminate blighting factors. Taken together, the Agency funding of the Station Project, combined with the resulting private sector reinvestment and elimination of blighting conditions, will produce new job opportunities for jobless, underemployed and low income residents and will enhance the overall quality of life for residents, businesses, workers, customers and visitors to the Irvington Area.*

**No other source of financing is available to the community to pay for the public improvements.** *Without the Bond proceeds, the City and Agency would need to identify \$120 million of regional, state and/or federal grant funding to design and construct the station. BART has repeatedly and clearly indicated that funding for its Warm Springs Extension would not include funding for the Irvington Station and that the Irvington Station can be funded **only if** the City and the Agency can arrange the necessary funding for development of the Station. Moreover, the current unprecedented recession and the disarray of the finances of the State of California have resulted in a massive City general fund mismatch between revenues and operating service expenses, leaving absolutely no room in the City's budget, now or in the foreseeable future, for the City to fund new capital improvement activities of the magnitude of the Station Project.*

**The Agency's funding of the public improvement is consistent with the Agency's Implementation Plan.** *The Agency's current Five-Year Implementation Plan covers the redevelopment planning period from July 1, 2008 through June 30, 2013. In addition to other goals and policies served in the Implementation Plan, the project to develop the Irvington BART station is identified and discussed as one of the Agency's key projects, in order to assist the extension of the BART Fremont line, to strengthen Irvington as a transportation hub by providing public transportation facilities, all in support of the revitalization of the commercial and residential portions of the Project Area.*

The Section 33679 Summary Report (attached to this staff report as Enclosure 2), particularly Parts IV and V, provides more detail regarding the evidentiary support for these Redevelopment Law findings.

In addition to the findings required by Redevelopment Law, the Station Project has major significance to the achievement of regional and statewide policy goals to promote higher density infill transit-oriented development and to control and reduce the generation of greenhouse gases and other toxic air pollutants. Based on staff's findings, and in compliance with Redevelopment Law, staff recommends that the Agency Board adopt a resolution approving actions and making required statutory findings in connection with funding by the Agency and execution of a funding agreement with the City and BART



for development of the Irvington BART station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area.

The Irvington Station construction will have significant impacts on key portions of the City's infrastructure, such as City streets (including curbs, gutters and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation and all other public facilities and appurtenances. Hence the Project Agreement was developed to ensure continued cooperation between BART and the City and to define the respective rights and obligations of each party in connection with the Station Project.

Key elements of the Project Agreement address the following specific issues:

- In cooperation with and subject to specified review and approvals from the City and using the Agency Funds, BART will be responsible for managing and causing the land assembly for and design and construction of the Irvington Station Project.
- BART agrees to use best efforts to implement the Irvington Station Project expeditiously and in the most cost-effective manner possible and to complete the work within budget.
- BART will designate a qualified BART project manager for the Irvington Station Project who will inform and coordinate with the City regarding all aspects of the project.
- BART will utilize the services of the existing WSX General Engineering Consultant to complete preliminary engineering of the Station and will issue a separate request for proposals for the remaining engineering design work. The selected consultant team will prepare the construction contract documents and BART will advertise the construction contract for bids and award the contract to the lowest responsive and responsible bidder.
- As part of the Station Project, BART will construct the necessary City street connections between the west Irvington Station parking lot and High Street to the north and Roberts Avenue to the west. These streets will be constructed to City standards and upon City acceptance will be turned over to the City to own, operate and maintain.
- BART will provide community outreach and liaison staff for the Irvington Station Project in conjunction with the ongoing WSX outreach activities.
- City Real Property staff may assist BART with some aspects of the property acquisition efforts. Any costs associated with this work will be reimbursed by BART from the Agency Funds.
- At the completion of the Station Project, the City will convey the existing mini-storage property for the west parking lot to BART for the purpose of maintaining parking for the Station.
- The Agency will use diligent good faith efforts to issue the Bonds to obtain the Agency Funds for the Irvington Station Project. If the Agency cannot issue the Bonds in a timely manner, it can terminate the Project Agreement.

- Upon issuance of the Bonds, the Agency will pay the \$120 million net proceeds of the Bonds (i.e., the Agency Funds) to BART to be held in a segregated, interest bearing account (with interest earned becoming part of the Agency Funds).
- BART may draw upon the Agency Funds monthly exclusively to pay the costs incurred for the Irvington Station Project, including reimbursement of staff and contractor costs incurred by the City to meet its review and support obligations under the Project Agreement in an amount not exceeding \$4.5 million.
- BART's monthly draws will be subject to City review and a mechanism for resolution of any disputes regarding such draws.
- Any Agency Funds remaining after payment of all costs of the Irvington Station Project will be returned to the City for use consistent with the Consolidated Amended Redevelopment Plan, the Redevelopment Law, and all other applicable legal requirements, including requirements for use of the Bond proceeds.
- If the Irvington Station Project costs exceed the Agency Funding of up to \$120 million, the parties will meet and confer to determine how best to proceed and will cooperate to secure regional and/or state funding to cover any funding shortfall.

Additionally, the City will provide a project oversight consultant (POC) who will work with the BART staff involved in the Station Project, and who will provide regular communication with the City and represent the City's interests of having a well designed and constructed, cost-effective, aesthetically pleasing station that is fully integrated into the Irvington Area. The POC will be selected by the City and all costs will be reimbursed by BART from the Agency Funds.

During the Station Project, it may be necessary, from time to time, to modify the Project Agreement to define additional aspects of the relationship between BART and the City that are not fully covered in the Project Agreement. Therefore, staff is requesting that the Agency Board authorize the City Manager or his designee to approve future amendments to this Project Agreement, if needed, so long as the amendment does not have a negative fiscal impact upon the City.

**FISCAL IMPACT:** On June 7, 2011, the Council and the Agency adopted Resolution Number 2011-33 and Resolution Number 428, respectively, approving the issuance and sale of tax allocation bonds of the Redevelopment Agency of the City of Fremont to finance redevelopment activities within or for the benefit of the Agency's Fremont Merged Redevelopment Project. This action is conditioned on approval of the Project Agreement and full execution of the Project Agreement by the Agency, the City and BART. The Bonds would be issued in a principal amount sufficient to yield \$120 million of net bond proceeds to provide the Agency Funding for the Irvington Station Project.

Repayment of the Bonds will be secured by the tax increment revenue generated from the Agency's Fremont Merged Redevelopment Project Area, net of the amounts required to be deposited in the Agency's Low and Moderate Income Housing Fund and net of certain statutory payment obligations of the Agency to various affected taxing entities that receive property taxes from the Project Area (which netted amounts would not be pledged toward repayment of the bonds).

Appropriation of these funds is included in the Agency's FY 2011/12 budget. However, because of this revised schedule, it is anticipated that Agency Funds from the Bonds will be available for transfer to BART for the Irvington Station Project in FY 2010/11. Accordingly, the Agency's FY 2010/11 budget will need to be amended to include appropriations for the transfer of \$120 million to BART and payment of issuance costs. The Agency's FY 2011/12 budget will need to be adjusted to reflect a corresponding reduction in appropriations. An appropriation for FY 2011/12 debt service payment on the Bonds is already included and no adjustment is required.

**ENVIRONMENTAL REVIEW:** The Irvington BART Station was environmentally cleared as an Optional Station through BART's State Environmental Impact Report approved in 2003 in accordance with the California Environmental quality Act ("CEQA") and its Federal Environmental Impact Statement approved in 2006. Also in accordance with CEQA, the City Council and Agency considered the environmental impacts of the Station Project as part of two recent actions: (1) the initial approval of partial advance Agency funding for the Station Project preliminary design and construction elements on November 12, 2008; and (2) approval of the Consolidated Amended Redevelopment Plan in March 2010 (for which the City and Agency prepared and certified their own EIR on March 2, 2010 to evaluate the Station Project among other redevelopment activities). No further environmental review is required as the proposed project is consistent with the previous scope of environmental review and it does not meet the thresholds requiring subsequent environmental review. The attached approval resolution provides additional detail about the manner in which the City Council and Agency have complied with CEQA in connection with the current actions.

**ENCLOSURES:**

- [Draft Resolution](#)
- [Section 33679 Summary Report](#)

**RECOMMENDATION:** Staff recommends that the Redevelopment Agency Board adopt a resolution:

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